

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

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Robert Harris,

Plaintiff,

v.

Sirius XM Radio Inc.,

Defendant.

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Civil Action No.: 2:13-cv-14739

**DEMAND FOR JURY TRIAL**

**COMPLAINT & JURY DEMAND**

For this Complaint, the Plaintiff, Robert Harris, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

**PARTIES**

4. The Plaintiff, Robert Harris ("Plaintiff"), is an adult individual residing in Lake Orion, Michigan, and is a "person" as defined by 47 U.S.C. § 153(10).
5. Defendant Sirius XM Radio Inc. ("Sirius"), is a New York business entity with an address of 1221 Avenue of the Americas, 36th Floor, New York, New York 10020 and is a "person" as defined by 47 U.S.C. § 153(10).

**FACTS**

6. Within the last four years, Sirius contacted Plaintiff in an attempt to advertise their services to Plaintiff.

7. At all times referenced herein, Sirius placed calls to Plaintiff's cellular telephone using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

8. Upon answering ATDS calls from Sirius, Plaintiff would hear a prerecorded message offering Plaintiff their services. Plaintiff tried to opt out of the calls but there was no opt out function available.

9. Plaintiff recently purchased a used car, which came with a trial subscription of Sirius's satellite radio services. Plaintiff did not have a previous business relationship with Sirius, nor did Plaintiff provide Sirius with the prior express consent necessary to place ATDS calls to Plaintiff's cellular telephone.

**COUNT I**

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –  
47 U.S.C. § 227, et seq.**

10. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. At all times mentioned herein and within the last four years, Sirius called Plaintiff on his cellular telephone using an automatic telephone dialing system ("ATDS") and/or by using a prerecorded or artificial voice.

12. Plaintiff never provided his cellular telephone number to Sirius and never provided his express consent to be contacted on his cellular telephone, and in fact made several attempts to opt out of Sirius's unsolicited ATDS calls.

13. Without prior express consent, Sirius placed automated calls to Plaintiff's cellular telephone knowing there was no consent to place such calls. Thus, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

14. The telephone number called by Sirius was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

15. The calls from Sirius to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

16. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C); and
2. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: November 15, 2013

Respectfully submitted,

By: /s/ Sergei Lemberg, Esq.  
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